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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 65.

GEORGE W. EVANS, APPELLANT,

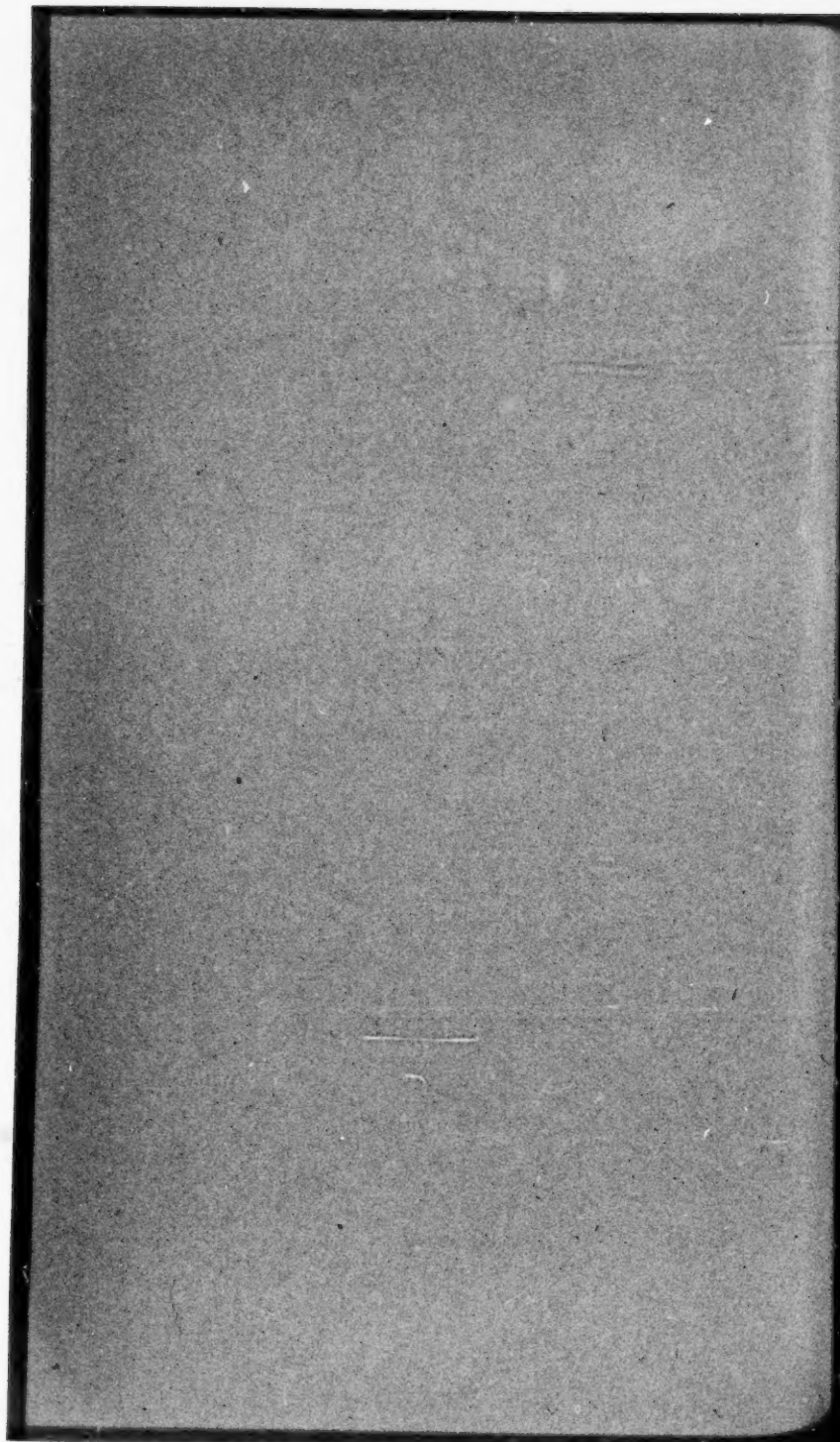
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MAY 31, 1910.

(22,206)



(22,206)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 308.

GEORGE W. EVANS, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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I. *Petition.*

Filed January 19, 1907.

In the Court of Claims.

No. 29957.

GEORGE W. EVANS
VS.
THE UNITED STATES.

Petition.

To the Honorable the Chief Justice and the Associate Justices of said Court:

Your petitioner respectfully represents:

1. That he is a citizen of the United States, residing in the city of Washington, D. C.

2. That on August 10, 1901, your petitioner was appointed by the Secretary of the Interior to the office of special disbursing agent to disburse an appropriation for the construction of additional buildings in the extension of the Government Hospital for the Insane, said appointment being in the following words:

"Mr. George W. Evans, Disbursing Officer.

"SIR: You are hereby appointed a special disbursing agent to disburse the appropriation of \$925,000, authorized and provided by the acts of June 6, 1900, and March 3, 1901 (U. S. Stats., vol. 31, pages 619 and 1163), for the construction of additional buildings in the extension of the Government Hospital for the Insane.

"For this service you will be allowed the maximum compensation prescribed by the act of March 3, 1875 (U. S. Stats., vol. 18, page 415, and the Supplement to the Revised Statutes, vol. 1, second edition, 1874-1891, page 78), not exceeding three-eighths of one per cent.

"Very respectfully,
"(Signed)

THOS. RYAN,
"Acting Secretary."

3. That your petitioner accepted said office and qualified by taking the prescribed oath of office, and giving bond in the penal sum of \$25,000 for the proper and faithful discharge of the duty thereby imposed. This bond was subsequently increased \$75,000 making a total bond given by the petitioner for this purpose \$100,000.

In both instances corporative surety bonds were furnished, the premiums for which were paid by your petitioner.

4. That on May 16, 1904, the original appointment of your petitioner as such special disbursing officer was increased by the following supplementary appointment:

"Mr. George W. Evans, Special Disbursing Officer, Government Hospital for the Insane.

"SIR: Under your original appointment of August 10, 1901, as a special disbursing officer of the Government Hospital for the Insane, you are hereby authorized directed to disburse the appropriation 'for painting new buildings, fifteen thousand dollars,' in the act to supply urgent deficiencies, approved February 18, 1904, and the appropriation 'for painting new buildings, fifteen thousand dollars,' in the act to supply deficiencies, approved April 27, 1904.

"For this service you will be allowed the same rate of compensation under the law, as provided in your original appointment.

"Very respectfully,
 "(Signed) E. A. HITCHCOCK, *Secretary.*"

5. That said appointments were made by the Secretary of the Interior by reason of the fact that Congress had in making appropriation for said funds placed the disbursement thereof under his control, and they were authorized and the compensation therefor fixed by law in the following statutes of Congress:

"No extra compensation exceeding one-eighth of one per centum shall in any case be allowed or paid to any officer, person, or corporation for disbursing moneys appropriated to the construction of any public building" (Act of March 3, 1869, 15 Stat. L., 312—afterwards sec. 1765, R. S. U. S.).

"That the provisions contained in the act approved March 3rd, 1869, entitled * * * limiting the compensation to be allowed for the disbursement of moneys appropriated for the construction of any public building was intended and shall be deemed and held to limit the compensation to be allowed to any disbursing officer who disburses moneys appropriated for and expended in the construction of any public building as aforesaid to three-eighths of one per centum for said service" (Act of March 3, 1875, 18 Stat. L., 415).

6. That your petitioner entered upon the duties of special disbursing agent, as aforesaid, and faithfully discharged the same, the accounts of his disbursements of the funds appropriated by Congress for the construction of said public buildings having been regularly audited and approved by the accounting officers of the Treasury Department. The amounts so disbursed are as follows:

4 From date of appointment to December 31, 1903:

Additional buildings	\$867,380.78
Office and administration buildings.....	111,638 60
Central heating and lighting plant.....	218,624.85

\$1,197,644.23

From January 1 to June 30, 1904:

Additional buildings	\$115,618.14
Office and administration buildings.....	45,259.25
Central heating and lighting plant.....	32,545.70
	<hr/>
	\$193,423.09

From July 1 to September 30, 1904:

Additional buildings	7,212.39
Central heating and lighting plant.....	9,445.08
	<hr/>
	\$16,657.47

From October 1 to December 31, 1904.....	\$3,860.00
From January 1 to June 30, 1905.....	1,294.00
	<hr/>
	\$1,412,878.79

7. That by the terms of his said appointment and the act of Congress governing the same and referred to therein, your petitioner became entitled to receive from the United States the sum of \$5,216.47, and although vouchers for the same were duly certified and approved for payment by the Secretary of the Interior, the accounting officers have refused, and do now refuse, to allow the same, and no part thereof has been paid.

8. That your petitioner is the sole owner of this claim and has not assigned or transferred the same; that the amount stated is justly due and owing to him, exclusive of all set-offs and just grounds of defense.

5 Wherefore petitioner prays judgment against the United States for the sum of five thousand, two hundred and sixteen and 47/100 (\$5,216.47) dollars.

GEORGE W. EVANS,
By RALSTON & SIDDONS,
Attorneys-in-Fact.

RALSTON & SIDDONS,
Attorneys for Petitioner.

DISTRICT OF COLUMBIA, ss:

William E. Richardson, being first duly sworn, on oath deposes and says that he is a member of the firm of Ralston & Siddons, attorneys-in-fact for the above-named petitioner, and as such has signed for foregoing petition; that he has read said petition and knows the contents thereof; that the matters and things therein stated upon personal knowledge are true, and those stated upon information and belief he is informed and believes to be true.

WM. E. RICHARDSON.

Subscribed and sworn to before me this 18th day of January,
A. D. 1907.
[SEAL.]

HARVEY T. WINFIELD,
Notary Public, D. C.

II. *Traverse.*

Filed February 9, 1909.

In the Court of Claims of the United States, Term A. D. 1909-1910.

No. 29957.

GEORGE W. EVANS
VS.
THE UNITED STATES.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

JOHN Q. THOMPSON,
Assistant Attorney General.

III. *Submission of Case on Merits.*

On the 9th day of February, 1909, this case was submitted on merits by Messrs. Ralston & Siddons, for the claimant, and by Mr. P. M. Ashford, for the defendants.

8 IV. *Findings of Fact, Conclusion of Law and Opinion of the Court.*

Filed June 10, 1909.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

On August 10, 1901, the claimant, who was an employee of the United States and was receiving a salary of \$3,000 per annum, while under such employment was appointed a special disbursing agent by the Secretary of the Interior, the appointment being in the following words:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, August 10, 1901.

"Mr. George W. Evans, Disbursing Officer.

"SIR: You are hereby appointed a special disbursing agent to disburse the appropriation of \$925,000 authorized and provided by

the acts of June 6, 1900, and March 3, 1901 (U. S. Stats., vol. 31, pp. 619 and 1163), for the construction of additional buildings in the extension of the Government Hospital for the Insane.

"For this service you will be allowed the maximum compensation prescribed by the act of March 3, 1875 (U. S. Stats., vol. 18, p. 415, and the Supplement of the Revised Statutes, vol. 1, second edition, 1874-1891, p. 78), not exceeding three-eighths of 1 per cent.

"Very respectfully,

THOS. RYAN,
"Acting Secretary."

On January 5, 1903, and May 16, 1904, the two following supplemental appointments were issued to the claimant:

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *January 5, 1903.*

"Mr. George W. Evans, Special Disbursing Agent, Government Hospital for the Insane.

"SIR: Under your original appointment of August 10, 1901, as special disbursing agent of the Government Hospital for the Insane, you are hereby authorized and directed to disburse the appropriations for an office and administration building, \$145,000, and for a central heating and lighting plant for the entire hospital, \$260,000, provided in the sundry civil act of June 28, 1902, both sums being additional appropriations to the original amount of \$953,000 appropriated in the deficiency act of March 3, 1901, for the extension of the Government Hospital for the Insane.

"For this service you will be allowed the same rate of compensation, under the law, as provided in your original appointment. In connection with this matter you are advised that the Auditor of the Treasury for the Interior Department, under date of the 5th instant, returns the request of the Secretary of the Interior that \$50,000 be placed to your credit, with the information that this advance is in excess of the penalty of your bond of \$25,000 as said special disbursing agent, and can not therefore be made, as such action would be in violation of Treasury Department Circular No. 126 of July 31, 1900.

"You are therefore directed to increase your bond \$75,000 as said special disbursing agent, making a total bond given by you for this purpose of \$100,000, which will probably be the limit hereafter of your monthly disbursement of the appropriations for the extension of the Government Hospital for the Insane.

"Respectfully,

THOS. RYAN,
"Acting Secretary."

"DEPARTMENT OF THE INTERIOR,
"WASHINGTON, *May 16, 1904.*

"Mr. George W. Evans, Special Disbursing Officer, Government Hospital for the Insane.

"SIR: Under your original appointment of August 10, 1901, as a special disbursing officer of the Government Hospital for the In-

sane, you are hereby authorized and directed to disburse the appropriation 'For painting new buildings, \$15,000,' in the act to supply deficiencies, approved April 27, 1904.

"For this service you will be allowed the same rate of compensation under the law as provided in your original appointment.

"Very respectfully, E. A. HITCHCOCK, *Secretary.*"

II.

Claimant accepted these appointments, and qualified by giving bond, with the National Surety Company, of New York, as surety, in the sum of \$25,000, which bond was approved by the Secretary of the Interior on October 19, 1900, and filed in the Treasury Department.

On January 5, 1903, the department required an additional bond, increasing the total bond to \$100,000, which was given, with the same surety, and on January 6, 1903, duly approved and filed.

III.

Claimant entered upon the duties defined in said appointments and faithfully discharged the same, and as such special disbursing agent he disbursed during the period from August 10, 1901, to June 30, 1905, the sum of \$1,410,761.87.

10 The commission thereon, fixed by said appointments at three-eighths of 1 per cent, if the claimant is entitled to compensation, is the sum of \$5,290.36.

IV.

Prior to the appointment of claimant as special disbursing agent, as stated in Finding I, the superintendent of said hospital for the insane had disbursed a part, to wit, \$32,312.13 of the moneys appropriated by Congress for the construction of additional buildings in the extension of the Government Hospital for the Insane; and after the appointment of claimant as disbursing agent as aforesaid, the superintendent of said institution continued to disburse the funds appropriated for the support and maintenance of the same, as well as the funds for certain minor additions and improvements.

V.

At the time of the making of said appointments, and during the time the claimant acted as such special disbursing agent, he held the office of disbursing clerk of the Department of the Interior and received the annual salary of \$2,000 provided by law and appropriated for that office, and also acted as disbursing clerk of the Architect of the Capitol, and received an annual compensation of \$1,000 provided by law and appropriated therefor.

VI.

The appointment of a special agent to make such disbursements was, in the judgment of the Secretary of the Interior, a necessity.

Claimant was treated by the accounting officers of the Treasury as a special disbursing agent, and his accounts as such, and all advances made to him, were adjusted under his special bonds and without reference to his bonds as disbursing clerk of the Department of the Interior, but no payments were made to him for such service by the Treasury Department.

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is not entitled to recover, and his petition is therefore dismissed.

Opinion.

ATKINSON, J., delivered the opinion of the court.

Claimant, who was chief of a division and disbursing clerk of the Interior Department, receiving a salary of \$2,000 per year, and was also disbursing agent for the Architect of the Capitol, for which he received \$1,000 per year, was appointed by the Secretary of the Interior as a special disbursing agent to disburse an appropriation made by the Congress for the enlargement of the Hospital for the Insane in the District of Columbia, and for such special service he presented a claim against the United States for \$5,290.36. Payment was refused by the accounting officers of the Treasury Department for the reason that claimant at the time said special service was rendered was holding two offices under the United States, the emoluments of which were greater than \$2,500 per year, and that such charge for such special services, therefore, was a violation of sections 1763 and 1765 of the Revised Statutes, because such special service was not provided for by law—*i. e.*, the act under which the appropriation was made did not provide for a special allowance to an agent to disburse said appropriation.

11 The principal contention of the claimant in this case is that at the time he rendered the services for which he brings this suit, he was receiving a salary of \$2,000 per annum as disbursing clerk for the Interior Department, and \$1,000 per annum for like services to the architect of the Capitol building, aggregating the sum of \$3,000 as an annual salary which he was then receiving from the Government, and although his salary from said two positions aggregated more than \$2,500 per year, he was not barred from receiving additional compensation by sections 1763 and 1765, Revised Statutes, because the two positions held by him are separate and distinct appointments, the salary of each being separately appropriated for by the Congress and attached to each respective office. Consequently, he insists that the \$1,000 salary allowed him as disbursing agent for the architect of the Capitol building was not an increase of or addition to the \$2,000 salary he was regularly receiving as disbursing clerk of the Interior Department, but on the contrary it was only a distinct salary compensation allowed him for the performance of the duties of a different office, both of which offices the Congress had

decided should be held by the same person; and furthermore, as Congress had legislated with respect to the office and not to the individual, a single individual might properly be appointed to and hold any number of offices regardless of the aggregate salary he receives, provided that no one of the salaries amounts to \$2,500 per year.

Additional and double compensation to employees of the Government are prohibited by the following provisions of the Revised Statutes:

"SEC. 1763. No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

"SEC. 1764. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

"SEC. 1765. No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

We do not deem it necessary to consider the above question as to the intent and meaning of section 1763, Revised Statutes, supra, for the reason that we do not regard it as controlling. It matters

not, so far as the merits of this case are concerned, whether claimant's two salaries, which he was receiving regularly, are considered separately or as one. The question at issue involves far more than the particular amount of claimant's salary as an employee of the Government. The real issue in the case is whether the Congress intended him to be paid more than his regular salary for the performance of the same or similar duties, in the absence of some statute authorizing the same and fixing the compensation therefor, within the meaning of the several sections of the Revised Statutes as construed by the Supreme Court in the cases referred to below.

The sections of the Revised Statutes above quoted have been repeatedly construed both by this court and the Supreme Court. In respect of sections 1763 and 1765, the Supreme Court, in the case of *Converse v. United States* (21 How., 463, 473) said: "The just and fair inference from these acts of Congress, taken together, is that no discretion is left to the head of a department to allow an officer who has a fixed compensation any credit beyond his salary, unless the service he has performed is required by existing laws and the remuneration of them is fixed by law." (See also *United States v. Shoemaker*, 7 Wall., 338.) And referring to section 1765, the same court in the case of *Hoyt v. United States* (10 How., 109, 141) said: "It is impossible to misunderstand this language or the purpose and

intent of the enactment. It cuts up by the roots these claims by public officers for extra compensation on the ground of extra services. There is no discretion left in any officer or tribunal to make the allowance, unless it is authorized by some law of Congress. The prohibition is general and applies to all public officers or quasi public officers, who have a fixed compensation." (See also *Pack v. United States*, 41 C. Cls. R., 423; *Woodwell v. United States*, 212 U. S. R., —).

Section 1764 in express terms prohibits any allowance or compensation to any officer for "the discharge of duties which belong to any other officer," in any department, or "for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law."

Section 1765 is even more stringent, as it applied to "any officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations;" and as to such officer it is provided that he shall not receive "any additional pay, extra allowance, or compensation, in any form whatever, * * * for any service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

It has been held in several cases that these statutes are not applicable to cases where two distinct offices, places, or employments, each of which has its own compensation, are held by one person at the same time. (*United States v. Saunders*, 120 U. S. R., 126, and cases there cited.) The rule in cases like the one at bar was clearly and concisely settled by the Supreme Court in *Hall v. United States* (91 U. S. R., 559), wherein it was decided: "Nor can any compensation for extra services be allowed * * * unless it appear that the head of the department was authorized by an act of Congress to appoint an agent to perform the extra service; that the compensation to be paid for the services was fixed by law; that the services to be performed had respect to matters wholly outside of the duties appertaining to the office held by the agent, and that the money to pay for the extra services had been appropriated by Congress."

13 In the case of the *United States v. King* (147 U. S. R., 676), it was still more explicitly decided that "When a statute increases the duties of an officer by the addition of other duties germane to the office, he must perform them without extra compensation, but if he is employed to render services in an independent employment, not incidental to his official duties, he may recover for such services."

Section 4839, after providing for the necessary qualifications of the Superintendent of the Government Hospital for the Insane, and fixing his duties generally, provided that "he shall be the responsible disbursing agent of the institution, etc." And section 4858 reads: "All appropriations of money by Congress for the support of the Hospital for the Insane shall be drawn from the Treasury on the requisition of the Secretary of the Interior and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money."

Those sections, however, as we construe them, have reference only to disbursements for the support or administrative expenses of the hospital, and not to disbursements for the constructions of new buildings, although the Secretary of the Interior might, under Revised Statutes, section 255 (if the superintendent of the hospital were a bonded officer) have designated him to disburse the money therefor as part of his duties. The Secretary of the Interior, however, saw fit to designate the disbursing officer of the Interior Department for this special service, and fixed his compensation therefor, under Revised Statutes, section 3634, at one-eighth of one per cent; but as the claimant was already in the employment of the Government at a fixed salary, he is precluded, under Revised Statutes, section 1765, from receiving "any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation." And as there is no law authorizing such additional compensation and no explicit appropriation therefor, the claimant, under the recent decision in the Woodwell case, 212 U. S. R., —, is not entitled to recover and his petition is accordingly dismissed.

Howry, J., was not present when this case was tried and took no part in its decision.

14

V. Judgment of the Court.

At a Court of Claims held in the City of Washington on the 10th day of June, 1909, judgment was ordered to be entered as follows:

The Court on due*consideration of the premises find for the defendants and do order, adjudge and decree that the petition of the claimant, George W. Evans, be and the same is hereby dismissed.

By THE COURT.

15 VI. *Claimant's Motion for New Trial and to Amend Findings.*

Filed November 30, 1909.

Comes now the claimant, by Ralston, Siddons & Richardson, his attorneys, and moves the court to amend its findings of fact and to grant a new trial and rehearing of the above cause upon the following grounds:

1. That the court erred in omitting from the findings of fact the following sentence of claimant's fifth request (on page 24):

"The Secretary of the Interior notified the Treasury Department that he had decided that the service rendered by the claimant under said appointment as special disbursing agent was not a part of his duties as disbursing clerk of the Department of the Interior, and was not an extra service added to and pertaining to his duties as such disbursing clerk."

2. That the court erred in holding as a conclusion of law upon the facts found that the claimant is not entitled to recover.

3. The court erred in its statement (Opinion, p. 4) that the principal contention of the claimant in this case is that he was holding two distinct offices, that of disbursing clerk for the Interior Department at \$2,000 per year and disbursing clerk for the architect of the capitol at \$1,000 per year, and therefore, because he did not hold any office to which an annual compensation of \$2,500 or more was attached, he was not barred from recovering the additional compensation now sued for by sections 1763 and 1765 of the Revised Statutes.

4. The court erred in not holding that the employment of the claimant as special disbursing agent, compensation for which he now sues, was not an "office" within the act of July 31, 1894 (page 30), and R. S. 1763, but was employment having no affinity or connection, either in its character or by law or usage, with the line of his official duty, where the service to be performed was of a different character, and for a different place, and with a compensation regulated by law.

5. The court erred in not rendering judgment in favor of the claimant.

RALSTON, SIDDONS &
RICHARDSON,
Attorneys for Claimant.

16 VII. *Argument and Submission of Claimant's Motion to Amend Findings of Fact and for a New Trial.*

On the 31st day of January, 1910, the claimant's motion to amend findings and for a new trial was argued by Mr. Jackson H. Ralston and Mr. William E. Richardson, for the motion, and by Mr. Philip M. Ashford, in opposition thereto, and the motion was submitted.

17 VIII. *Opinion of Court Overruling Motion.*

Filed Feb. 28, 1910.

ATKINSON, J., delivered the opinion of the court.

This case was decided by the court June 10, 1909 (44 C. Cls., 549), and was again presented February 2, 1910, upon a motion for a new trial and for amendment of the findings of fact. We have given the motion due consideration, and again decide that the facts are therein correctly stated; but upon more mature reflection (although there is in the minds of some members of the court reasonable grounds for doubt), that we, perhaps, gave a wrong construction or rather too restricted a construction to the scope of the duties of the superintendent of the Government Hospital as defined by section 4839 of the Revised Statutes. Said section, after providing for the necessary qualifications of the superintendent of the Govern-

ment Hospital for the Insane and fixing his duties generally, provides that "he shall be the responsible disbursing agent of the institution," etc. And section 4858 reads: "All appropriations of money by Congress for the support of the Hospital for the Insane shall be drawn from the Treasury on the requisition of the Secretary of the Interior and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money."

We can find nothing in the statutes relating to this hospital which restricts the superintendent's authority as its disbursing officer of the public funds appropriated by Congress to its support or maintenance only and not for any and all other purposes as well. Congress seems to have made no distinction between appropriations for the maintenance and the extension of the institution. On the contrary, the sundry civil bill of June 6, 1900 (31 Stat. L., 588, 619), under the head of "Government Hospital for the Insane," contains appropriations for current expenses, for certain specific repairs, for the construction of a central storehouse and refrigerator, for a water tower, pump house, cold-storage plant, new kitchen, new fencing, constructing roadways, and "for an extension of the hospital sufficient to provide for 1,000 patients." (The larger portion of this latter item was disbursed by claimant.)

18 It appears from the superintendent's report for the year ending June 30, 1902, that he, during that year, not only disbursed all the funds for the maintenance of the institution, but he also disbursed the sum of \$32,312.13 for buildings, and had left on hand and available for building purposes \$190,898, which was turned over to the claimant in this case as special disbursing officer, designated by the Secretary of the Interior for that purpose. (H. Doc. vol. 21, Book No. 4647, pp. 357-359; also Book No. 4800, pp. 209-211.)

In Bartlett's case (39 C. Cls., 338, 344), which was affirmed by the Supreme Court (197 U. S., 230), this court decided that the Secretary of the Treasury was without authority to appoint a special disbursing agent in the custom's district, because that duty was incumbent upon an officer created by law for that purpose. Inasmuch, therefore, as the superintendent of the Hospital for the Insane was made by section 4839, Revised Statutes, its legally constituted disbursing officer, he was the proper person to disburse the appropriation under consideration.

Independently, however, of the views above expressed, as was stated in our former opinion, as claimant, at the time he was appointed a special disbursing agent, was already in the employment of the Government at a fixed salary of \$3,000 per annum, he is precluded, under Revised Statutes, section 1745, from receiving "any additional pay, extra allowance, or compensation in any form whatever for the disbursement of public money, or for any other service or duty whatever, unless the same was authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation." And as there is no law authorizing such additional compensation and no explicit appropria-

tion therefor the claimant, under the recent decision in the Woodwell case (214 U. S., 82), is not entitled to recover.

In conformity to what we have herein stated, the motion for a new trial and to amend the findings is overruled.

By THE COURT.

19 IX. *Application for, and Allowance of, Appeal.*

No. 29957.

GEORGE W. EVANS
vs.
THE UNITED STATES.

Motion for Allowance of Appeal.

On behalf of the claimant, we respectfully request the allowance of an appeal to the United States Supreme Court from the decision of this Court, rendered February 28, 1910, in the above entitled cause.

RALSTON, SIDDON &
RICHARDSON,
Attorneys for Claimant.

Filed May 12, 1910.

Ordered: This 12th day of May, 1910, that the above application be allowed as prayed for.

By THE COURT.

20 In the Court of Claims.

No. 29957.

GEORGE W. EVANS
vs.
THE UNITED STATES.

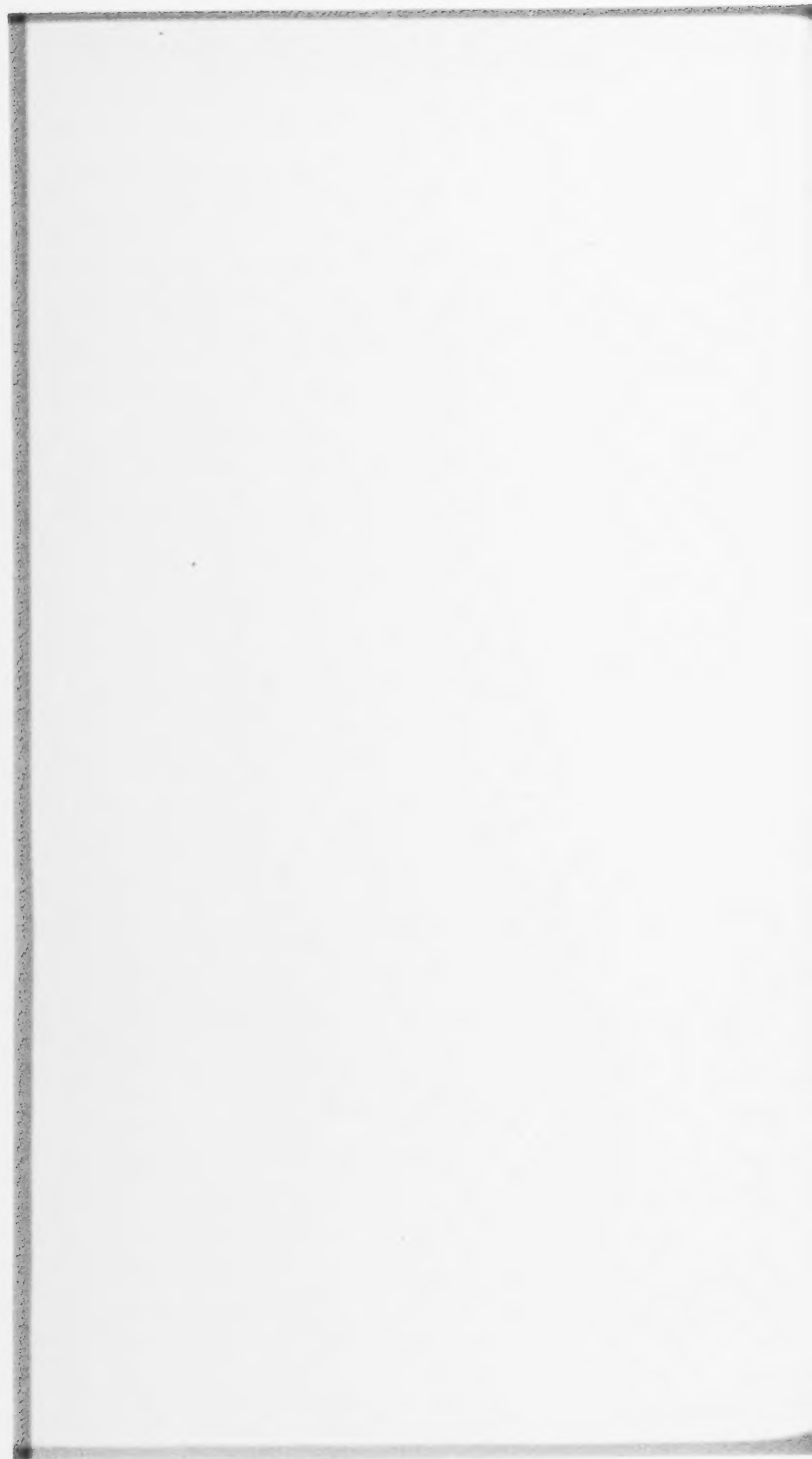
I, John Randolph, Assistant Clerk of the Court of Claims, hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law of the Court; of the opinion of the Court; of the judgment of the Court dismissing the petition; of the motion of the claimant for new trial and to amend findings; of the argument and submission of the same; of the opinion of the Court overruling said motion; of the application of claimant for, and allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this 16 day of May, 1910.

[Seal Court of Claims.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 22,206. Court of Claims. Term No. 308. George W. Evans, appellant, vs. The United States. Filed May 31st, 1910. File No. 22,206.



23
U. S. Supreme Court, U. S.
FILED.

OCT 31 1912

JAMES H. McKENNEY,
CLERK.

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912

No. 65.

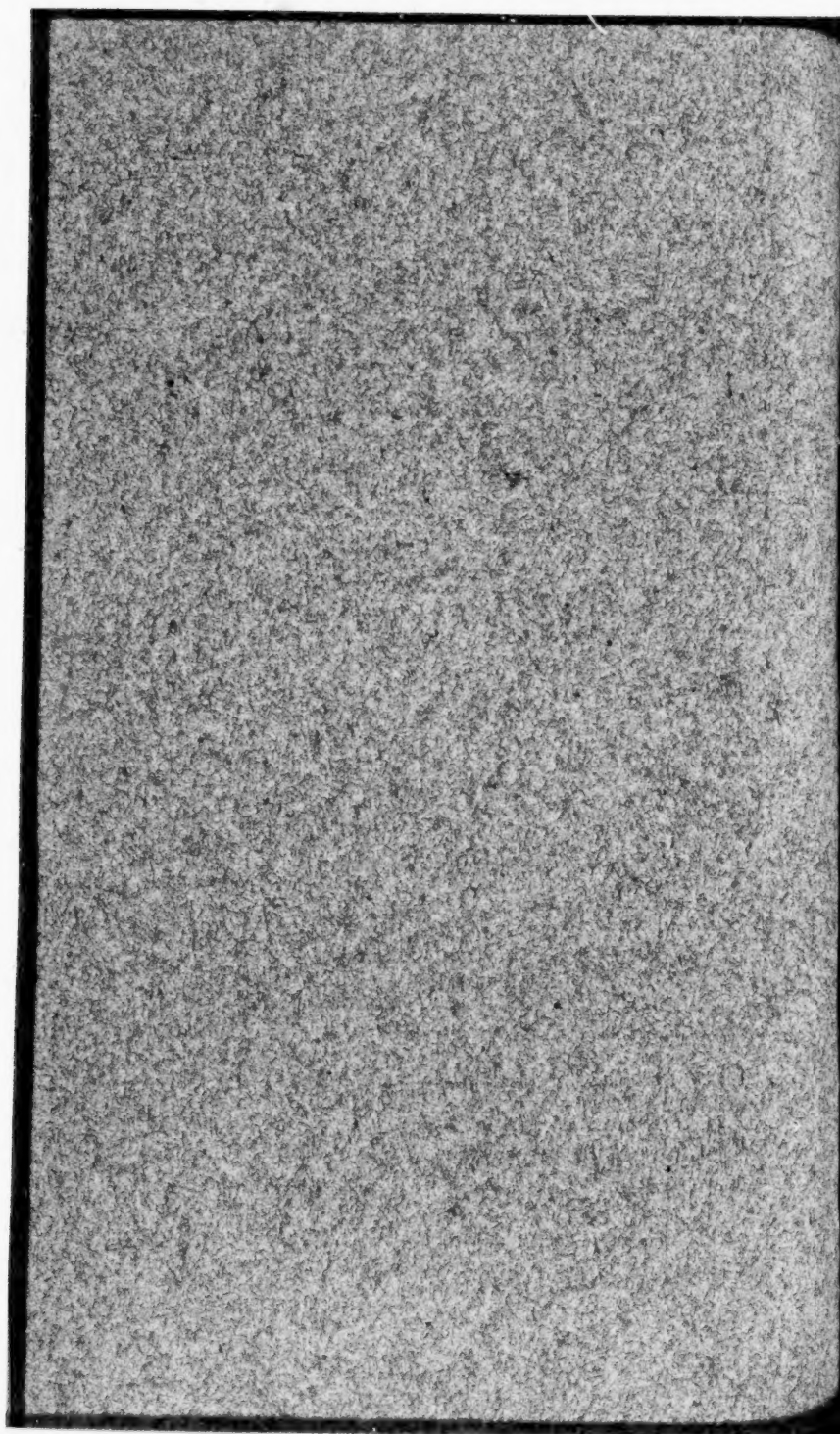
GEORGE W. EVANS

vs.

THE UNITED STATES.

BRIEF FOR APPELLANT.

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 65.

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BRIEF FOR APPELLANT.

Statement of the Case.

This case is on appeal from a judgment of the United States Court of Claims entered June 10, 1909 (Record, page 10), dismissing claimant's petition after a trial on the merits. This judgment became final on February 28, 1910, upon the overruling of claimant's motion for a new trial and to amend the findings of fact (Record, pages 11-13).

The appellant brought suit in the Court of Claims for \$5,290.36 as a commission of three-eighths of one per cent upon the sum of \$1,410,761.87, disbursed by him between August 10, 1901, and June 30, 1905, under an appointment of the Secretary of the Interior as Special Disbursing

Agent Government Hospital for the Insane, fixing his compensation at that rate.

From a date prior to August 10, 1901, the appellant has been a disbursing clerk of the Interior Department, and has received an annual compensation of \$2,000 provided by law and appropriated for that office. He has also acted as disbursing clerk of the architect of the Capitol, and has received an annual compensation of \$1,000 provided by law and appropriated therefor (Finding V, Record, page 6).

On August 10, 1901, the Secretary of the Interior appointed the appellant a special agent to disburse the appropriation of \$925,000 provided by the act of Congress of June 6, 1900 (31 Stat., 619), for the construction of new buildings for the extension of the Government Hospital for the Insane. This appointment, quoted on Record page 4-5, concludes with the statement:

"For this service you will be allowed the maximum compensation prescribed by the act of March 3, 1875 (U. S. Stats., Vol. 18, p. 415 and the Supple. of the Rev. Stat., Vol. 1, 2d edition, 1874-1891, p. 78), not exceeding three-eighths of one per cent."

On January 5, 1903, and May 16, 1904, the original appointment was supplemented by including the disbursement of additional appropriations for the same purpose, aggregating \$430,000, and increasing the appellant's bond from \$25,000 to \$100,000.

Both of these supplemental appointments contain the following:

"For this service you will be allowed the same rate of compensation under the law as provided in your original appointment."

(Record, pages 5 and 6.)

The appellant accepted these appointments and qualified by giving surety company bonds, the first for \$25,000 and later for \$100,000, the premiums for which he paid. The

first bond ran from August 19, 1901, to January 5, 1903, and the larger bond from January 6, 1903, to June 30, 1905.

The appellant "was treated by the accounting officers of the Treasury as a special disbursing agent, and his accounts as such, and all advances made to him, were adjusted under his special bonds and without reference to his bond as disbursing clerk of the Department of the Interior." (Finding VI, Record, page 7.)

The Court of Claims also reports in its findings (VI, page 6) that—

"The appointment of a special agent to make such disbursements was, in the judgment of the Secretary of the Interior, a necessity."

The appellant requested the Court of Claims to include in its findings of fact the following paragraph:

"The Secretary of the Interior notified the Treasury Department that he had decided that the service rendered by the claimant under said appointment as special disbursing agent was not a part of his duties as disbursing clerk of the Department of the Interior, and was not an extra service added to and pertaining to his duties as such disbursing clerk."

Appellant's requested finding quoted above merely summarized, and we believe that counsel for the appellee will concede that it correctly states the official letter of the Secretary of the Interior to the Comptroller of the Treasury, dated February 16, 1905, found on pages 15 and 16 of the trial record in the Court of Claims, and which we append as Exhibit A to this brief.

At the termination of the appellant's service as special disbursing agent, the vouchers for payments made to himself on account of his compensation were checked against his accounts and he was required to refund the sum of \$5,290.36 for which this suit was brought.

Specification of Errors.

The Court of Claims was in error:

1. In holding that because the appellant was an employee of the Government he could not recover compensation for his services as special disbursing agent.

2. In not holding that the compensation for which suit is brought is for services performed by virtue of a separate and distinct appointment authorized by law, not added to or connected with the regular duties of the office he held, and that the amount of compensation therefor is fixed by law.

3. In holding that this is a claim for additional or extra services, and that it is subject to the provisions of sections 1763, 1764 and 1765 of the Revised Statutes.

4. In not awarding a judgment in appellant's favor for \$5,290.65.

ARGUMENT.

We concede that a Government officer has no right to recover extra compensation for extra work. This subject has been exhaustively examined by this court in numerous cases, many of them being summarized in *King vs. U. S.*, 147 U. S., 676.

We contend that a right of recovery exists in this case because the services were performed and expenses incurred under a distinct employment or appointment by the Secretary of the Interior; the special employment was authorized by law; its duties and responsibilities were separate and distinct from the other office, and its compensation was fixed by law.

Prior to the passage of legislation upon the subject, there was no question of the right of recovery for services rendered in an independent employment, not incidental to the official duties of an officer. *King vs. U. S.*, 147 U. S., 676 (679), and cases collected.

Whatever changes have occurred in this rule are statutory. All of the laws upon this subject, extending from the year 1839 to 1894, have been considered and construed by this court, and the question here is not the proper construction of these statutes, but whether, in the light of the interpretation placed upon them by this court, the services performed by the appellant are extra or additional to his official duties, or whether they were under a distinct employment authorized by law.

THE STATUTES RELATING TO EXTRA PAY AND DUAL OFFICES.

Rev. Stat., 1765: "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form

whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

(From act of March 3, 1839, ch. 82, 5 Stat., 349, and act of August 23, 1842, ch. 183, sec. 2, 5 Stat., 510.)

Rev. Stat., 1764: "No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

(From act of August 26, 1842, ch. 202, sec. 12, 5 Stat., 525.)

Rev. Stat., 1763: "No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

(From act of August 31, 1852, ch. 108, 10 Stat., 100.)

Act of July 31, 1894, sec. 2, 28 Stat., 205:

"No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law."

STATUTES AUTHORIZING EMPLOYMENT OF SPECIAL AGENT TO
DISBURSE FUNDS AND FIXING COMPENSATION.

Rev. Stat., 3614: "Whenever it becomes necessary for the head of any department or office to employ special agents other than officers of the army or navy, who may be charged with the disbursement of public moneys, such agent shall, before entering upon duty, give bond in such form and with such security as the head of the department or office employing them may approve."

(From act of August 4, 1854, ch. 242, 10 Stat., 573.)

Rev. Stat., 3657: "The collectors of customs in the several collection districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals, with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just."

(From act of June 12, 1858, ch. 154, 11 Stat., 327.)

Rev. Stat., 3658: "Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just."

(From act of July 28, 1866, ch. 302, 14 Stats., 341.)

Act of March 3, 1869, ch. 122, 16 Stat. L., 306, now sec. 255, Rev. Stat.:

"For court-house, Springfield, Illinois, twenty-five thousand dollars. *Provided*, That the Secretary of the Treasury may, at his discretion, designate any officer of the United States who has given bonds for the faithful performance of his duties, as disbursing agent for the payment of all moneys

that are or may be appropriated for the construction of public buildings authorized by law in their respective districts."

Rev. Stat., 3654: "No extra compensation exceeding one-eighth of one per centum shall in any case be allowed or paid to any officer, person, or corporation for disbursing moneys appropriated to the construction of any public building."

(From act of March 3, 1869, ch. 123, 16 Stat., 311, as follows:

To complete the north wing of the Treasury building and approaches, including all liabilities, one hundred and sixty-three thousand five hundred and nine dollars and twenty cents: *Provided*, That no extra compensation exceeding one-eighth of one per centum in any case shall hereafter be allowed to any officer, person, or corporation, for disbursing any moneys appropriated to the construction of any public building.)

Act of March 3, 1875, ch. 131, 18 Stat., 415:

"That the provisions contained in the act approved March third, eighteen hundred and sixty-nine, entitled 'An act making appropriations to supply deficiencies in the appropriations for the service of the Government for the fiscal year ending June thirtieth, eighteen hundred and sixty-nine, and for other purposes,' limiting the compensation to be allowed for the disbursement of moneys appropriated for the construction of any public building, was intended and shall be deemed and held to limit the compensation to be allowed to any disbursing officer who disburses moneys appropriated for and expended in the construction of any public building as aforesaid to three-eighths of one per centum for said service."

Act of August 7, 1882, ch. 433, sec. 1, 22 Stat. L., 306:

"For repairs and preservation of public buildings: For repairs and preservation of custom-houses, and post-offices, and

other public buildings, under control of the Treasury Department, one hundred and forty thousand dollars. *And any disbursing agent* who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, *shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed.*"

STATUTES RELATING TO COMPENSATION OF DISBURSING CLERK,
INTERIOR DEPARTMENT.

* "Rev. Stat., 176: * * * Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year."

From act of March 3, 1879, 20 Stat., 391:

"And hereafter the disbursing clerk of the Department of the Interior is hereby required to act as disbursing clerk of the architect of the Capitol, and to disburse all moneys appropriated for the United States Capitol extension and improvement of the grounds, and to receive an annual compensation of one thousand dollars, to be paid out of said appropriation."

Legislative, Executive and Judicial Appropriation Act of March 3, 1901, ch. 830, 31 Stat., 960 (page 995):

"Department of the Interior, office of the Secretary: For compensation of * * * ; seven clerks, chiefs of division, at two thousand dollars each, one of whom shall be disbursing clerk; * * *"

(Page 1000:)

"Office of the architect of the Capitol. * * * compensation to disbursing clerk, one thousand dollars."

AUTHORITY OF SECRETARY OF INTERIOR TO APPOINT SPECIAL
DISBURSING AGENT.

The act of August 4, 1854, now R. S. 3614 (*supra*), is an express statutory recognition of the right of the head of any department to employ special agents for the disbursement of public moneys.

It is to be noted that in this case the requirements of the statute were strictly observed by the Secretary of the Interior. The record shows (Finding VI, page 6) that he determined the necessity of the appointment, and claimant's bond was duly approved by the Secretary before being forwarded to the Treasury Department (Record, p. 6).

In *U. S. ex. Potter*, 27 Fed. Cas., No. 16076, an action brought on the official bond of such an agent, the defense urged by the surety, was that there was no statutory authority for the appointment. The court, citing this act of 1854, held:

"The head of a department of the Government is authorized in the administration of the duties of office to employ agents and determine when an exigency arises demanding their employment."

We cite this statute to make more clear the right of the Secretary, not meaning to convey any idea that his right, generally, was questioned by the court below.

STATUTES RELATING TO EXTRA PAY AND DUAL OFFICES DO
NOT APPLY TO THIS CASE.

The acts, which we have heretofore quoted, contain restrictions upon the following subjects:

R. S. 1763: An officer receiving compensation for performing the duties of another office.

Act of 1894: Prohibiting the appointment of a person

holding an office to which an annual compensation of \$2,500 or more is attached to another office.

These two provisions have no application to the pending case, for the following reasons:

First. The "other office" must be an office within the constitutional sense, and a special appointment such as the present, to do certain specified work, which is terminated ipso facto by the completion of the work, lacks the essential characteristics of an "office" within the intent of the act.

The same question involved here was considered in 21 Op. Att'y Gen., 507, and it was held:

"The statute authorizing the expenditure of the money clearly does not create an office or contemplate any of the formalities in the selection of such an employee as to distinguish his employment as an officer. There is no permanency to the term, there is no requirement that the person employed shall either take an official oath or receive a commission.

"Section 2 of the act of July 31, 1894, has received construction twice at the hands of the Comptroller of the Treasury, namely, in the cases of Reynolds (reported in 2 Decisions of the Comptroller, 271), and Fleming (*Id.*, 467), where the authorities bearing upon the essential elements distinguishing an office within the language of that statute from a mere employment, are collated and dwelt upon. Certainly, the person to be employed under the provisions of the act of February 19, 1897, is more remote from the essential characteristics of an officer, than were either of the employees mentioned by the Comptroller."

In the case of Fleming, 2 Compt. Dec., 467 (470-472), this question was discussed at length. The "other office" in that case, which was an appointment to do specific work, which, when concluded, terminated the employment, was held not to constitute an office within the meaning of the act of July 31, 1894. The authorities on the question were carefully reviewed, and the conclusion of the Comptroller was approved by Mr. Justice McKenna, then Attorney-General, in the opinion above quoted.

Second. The claimant does not hold an office "the salary or annual compensation attached to which amounts to the sum of \$2,500."

The claimant holds in the first instance the office of disbursing clerk of the Department of the Interior. This office is created by provisions of the Revised Statutes, and its compensation is fixed by law at \$2,000 per annum.

In the annual appropriation acts of each year will be found an appropriation of \$2,000 for the disbursing clerk of the Interior Department. By the act of March 3, 1879, however, quoted *supra*, the office of disbursing clerk of the architect of the Capitol, with an annual compensation of \$1,000, is also conferred upon the person who holds the office of disbursing clerk of the Department of the Interior, and in each of the annual appropriation acts, under the title "Office of the architect of the Capitol," will be found the provision "compensation to disbursing clerk, \$1,000."

Although it may be conceded that the office of disbursing clerk of the architect of the Capitol is "attached" by virtue of this statute to the incumbent of the office of disbursing clerk of the Interior Department, the salaries of each office are appropriated for and attached to each respective office.

Salary is an incident of an office and is the consideration in some fixed amount for performing the duties of the office.

The salary of \$1,000, granted by the act of March 4, 1879, was not an increase of or addition to the existing salary of the disbursing clerk of the Interior Department. It was a distinct salary compensation for the performance of duties of a different office, both of which, in the opinion of Congress, should be held by the same person. That this distinction has been consistently maintained, has been shown by the manner of making the appropriations.

In the "Official Register of the United States" ("Blue Book"), the name of the claimant is given under the title of "Chief Clerk, Financial Division, Secretary's Office, Department of the Interior," and his compensation stated at \$2,000 per year.

In the act of July 31, 1904, Congress has legislated with respect to the office, not the individual. A single person might properly be appointed to and hold any number of offices, regardless of the aggregate of the salaries he receives, provided that no one of them amounts to \$2,500 per year.

This act is founded upon the distinction drawn in practice between officers having higher pay, and those of the average grade. In the latter class, the duties are usually clerical or manual, not requiring thought or study outside of the regular hours of employment. The duties are fixed and the work allotted. In the former the duties are usually more general in character, involving a higher degree of mental training and labor.

The offices to which an annual salary of \$2,500 or more is attached are not numerous. Reference to the "Blue Book" shows, for instance, that in the State Department, outside of the list of diplomatic and consular representatives in foreign countries, there are only eight offices of this character.

In legislating with reference to these offices, Congress must be limited to the particular offices described.

We therefore submit that the claimant does not come within the inhibition of this statute as one holding "an office, the salary or annual compensation attached to which amounts to the sum of \$2,500."

The term attached and the term compensation relate to the office. The compensation of the office of disbursing clerk of the Interior Department is \$2,000 a year.

CONTINUING SUBJECT OF "STATUTES RESTRICTING PAY FOR
EXTRA SERVICES AND HOLDING OF DUAL OFFICES."

Rev. Stat. 1765: Prohibit "additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public moneys, or for any other service or duty whatever, unless the same is authorized by law, and the

appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation."

Rev. Stat. 1764: Prohibits compensation for performing duties belonging to another officer or clerk in the same or any other Department; also provides that "no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

(It may be noted that we have, in quoting sections 1763, 1764 and 1765, reversed the order of the Revised Statutes. This was because we desired to consider them in the order in which they were originally enacted into law.)

Section 1765 originated in a proviso to the act of March 3, 1839 (5 Stat., 349). The original statute did not contain the provision "and the appropriation therefor explicitly states that it is for such additional pay, extra allowance or compensation." This language was added by section 2 of the act of August 23, 1842 (5 Stat., 510).

Section 1764 originated in the act of August 26, 1842, section 12 (5 Stat., 525).

CONVERSE VS. U. S., 21 HOW., 463.

This case was decided on March 11, 1859, and is the first case in which this court construed the above sections of the acts of 1839 and 1842. It was argued by distinguished counsel. The opinion of the court was delivered by Mr. Chief Justice Taney.

After discussing section 18 of the act of May 7, 1822, restricting extra compensation to collectors of customs and naval officers, the opinion proceeds with the following explanation and construction of the acts of 1839 and 1842:

"After this act of 1822, there is no act of Congress bearing upon this question until 1839. In the meantime, about the year 1833, and subsequently to that time, several cases came before the Supreme Court, in which officers who were not named in the act of

1822, but who received a fixed salary as a clerk in a Department, or a fixed compensation as an officer in the army or in some other office, claimed the right to set off against the United States compensation for extra services undertaken by the direction of the Secretary, and for which there was no fixed compensation by law. And in these cases this court held that such compensation might be claimed and set off under the act of Congress allowing set-offs against the United States; and that, where the extra service had been required by the head of the proper Department, the officer was entitled to a reasonable compensation, to be allowed by the jury upon the evidence, even if there was no law expressly requiring the service or fixing compensation for it; and that it might be ascertained and allowed by the jury in proper cases, under the direction of the court, even if the head of the Department had fixed no compensation, and refused to allow the claim.

"Under these decisions, claims of this description were frequently made, and the United States involved in inconvenient controversies in court. These controversies again attracted the attention of Congress to the subject of compensation for extra services; and in 1839 they passed an act, embracing all persons holding office with a fixed salary, precisely similar in its principles with the act in relation to custom-house officers—that is to say, they took away from the heads of departments, and from courts and juries, the right to fix the compensation in any case where it was not fixed by law; and if there was no law ascertaining the compensation or allowance for the particular service, the party was entitled to none. It carries out the principle and policy of the act of 1822, and provides that there shall be no compensation in addition to the salary, 'unless said extra allowance or compensation be authorized by law.'

"Nor does the act of August 23, 1842 (5 Stat., 510), go further than the act of 1839, except only in declaring that, in order to entitle the party to demand compensation, it must not only be fixed by law, but that the law appropriating it shall explicitly set forth that it is for such additional pay, extra allowance or compensation. Now these words, added

to the provisions in the act of 1839, only show that the legislature contemplated duties imposed by superior authority upon the officer *as a part of his duty*, and which the superior authority had in the emergency a right to impose, and the officer was bound to obey, although they were extra and additional to what had previously been required. But they can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character, and for a different place, and the amount of compensation regulated by law."

U. S. VS. SAUNDERS, 120 U. S., 126.

This case was decided on January 24, 1887, nearly thirty years after the Converse decision. The appellee Saunders had received the salary of a clerk in the office of the President and sued for the salary of clerk to the Senate Committee on Commerce. He had performed the duties of both offices.

The court points out the fact that the authority relied upon by the Comptroller in rejecting the account, the opinion of Attorney-General Black, reported in 9 Compt. Dec., 123, was in conflict with the opinions of his predecessors and had been practically overruled in later opinions. This opinion of Attorney-General Black holds that the acts of 1839 and 1842 forbid "any extra pay or additional compensation, in any form whatever, to officers or persons having fixed salaries, for any other services whatsoever, unless on specific appropriation, explicitly setting forth that it was for such additional pay."

It was written on October 17, 1857, when the Converse case, *supra*, was pending, and the principles it maintains were identical with the contentions of the Government, speaking again through Attorney-General Black, before this court in the Converse case. These contentions were overruled in that case.

Supporting his statement by a reference to the Converse case, Mr. Justice Miller, delivering the opinion in the Saunders case, states:

"We are of opinion that, taking these section all together, the purpose of this legislation was to prevent a person holding an office or appointment for which the law provides a definite compensation by way of salary or otherwise, which is intended to cover all the services which, as such officer, he may be called upon to render, from receiving extra compensation, additional allowances, or pay for other services which may be required of him, either by act of Congress or by order of the head of his Department, or in any other mode, added to or connected with the regular duties of the place which he holds; but that they have no application to the case of two distinct offices, places or employments, each of which has its own duties and its own compensation, which offices may both be held by one person at the same time. In the latter case he is, in the eye of the law, two officers, or holds two places or appointments, the functions of which are separate and distinct, and, according to all the decisions, he is, in such case, entitled to recover the two compensations."

UNITED STATES VS. KING, 147 U. S., 676.

In this case the court reviewed its former decisions construing Rev. Stat. 1763, 1764 and 1765, concluding its discussion by quoting from *United States vs. Saunders* the portion of the opinion we have quoted *supra*, evidently with the view that this quotation epitomizes the law upon the subject. It was held that the claimant King could not recover because the services rendered were "incidental and germane to his regular duties as clerk."

NO PROHIBITION OF SPECIAL EMPLOYMENTS.

It will be noted that these statutes as construed by this court relate only to the prohibition of compensation for extra work pertaining to the regular duties of an officer or employee—*i. e.*, that which may be required of him as such officer or employee. They also include work which should properly be discharged by some other officer or employee.

They do not forbid the employment of an officer in a special capacity to perform services not required of him as such officer. Nor is it necessary that such special employment constitute an "office," as is illustrated by the following citations:

Meigs vs. U. S., 19 C. Cls., 497.

8 Op. Att'y Gen., 325.

Garter vs. U. S., 31 C. Cls., 344; 170 U. S., 527.

Converse vs. U. S., 21 How., 463.

U. S. vs. Saunders, 120 U. S., 126.

In the latter case the opinion states that it is unnecessary to decide whether the clerkship to the Senate committee constituted an office.

APPELLANT'S EMPLOYMENT WAS TO PERFORM DUTIES DISTINCT FROM HIS OFFICIAL DUTIES AS DISBURSING CLERK.

Our request for a special finding on this point was not passed upon by the Court of Claims because in the view it took of the law it was immaterial, and possibly because that court considered the facts sufficiently set forth in the Findings I and VI.

The latter states that the appointment of a special agent to make the disbursements was a necessity in the judgment of the Secretary of the Interior. The findings of the Secretary contained in his official letter (Exhibit A) are directly in point.

The appointments issued to the appellant conclusively show the judgment of the Secretary on this question.

The Secretary of the Interior, as the official head of that Department, is charged with the proper administration of law pertaining to its executive and internal management. He is peculiarly competent to determine this question. While the court might have the power to reverse his finding upon such a matter, it is a power which should only be exercised in a plain case of error on his part. Here there is nothing to indicate that he was in error.

In *U. S. vs. Jones*, 18 How., 92, this court said:

"The Executive Department of the Government, to which is entrusted the control of the subject-matter, must necessarily determine all questions appertaining to the employment and payment of such temporary agents, and the exigency which demands their employment."

See also *U. S. vs. Johnston*, 124 U. S., 252.

DISBURSEMENTS WERE NOT PART OF DUTIES OF SUPERINTENDENT OF GOVERNMENT HOSPITAL FOR THE INSANE.

In its original opinion (Record, pages 9 and 10) the Court of Claims approved this view of the statutes prescribing the duties of that office. They say:

"These sections, however, as we construe them, have reference only to disbursements for the support or administrative expenses of the hospital, and not to disbursements for the construction of new buildings."

In the decision of the motion for new trial (Record, page 11) that court, however, indicates that some members of the court have reached a contrary view of the law.

Sec. 4839 of the Revised Statutes prescribes the qualification and duties of the superintendent, who shall be, it is

stated "the chief executive officer of the institution." He "shall give bond for the faithful performance of his duties in such sum and with such securities as may be required by the Secretary of the Interior." He must be a competent physician and "devote his whole time to the welfare of the institution," and "he shall be the responsible disbursing agent of the institution."

This was taken from section 3 of the act of March 3, 1855 (10 Stat., 682). Section 7 of the same act, now Rev. Stat. 4858, provides that:

"All appropriations of money for the support of the Hospital for the Insane shall be drawn from the Treasury on requisition of the Secretary of the Interior and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money."

The act of June 6, 1900 (31 Stat., 619), providing for the construction of the new buildings, directs that the plans be approved by the Secretary of the Interior and that the contracts for construction be made by him. The superintendent of the hospital is not given charge of or control over the work in any particular.

We therefore submit that it was clearly the intent of Congress that the superintendent of the hospital should act as its disbursing officer only in respect to appropriations for its support and administrative expenses. Such was certainly the judgment of the Secretary when he decided that it was necessary to appoint a special agent to disburse these funds. If the Treasury Department had taken this view now asserted by the appellee, it should have refused to recognize the appointment of the appellant, but have insisted upon making the disbursements through the superintendent.

STATUTES FIXING COMPENSATIONS.

We have quoted the language of several statutes fixing at three-eighths of one per cent the compensation of any officer or person disbursing funds for the construction of any public building. The language quoted shows that this provision was made so broad that no question might thereafter arise. R. S. 3654 was placed in a chapter of the Revised Statutes relating to general matters under the title "The Public Moneys."

The contention of the appellee below, that these acts related solely to collectors of customs, and do not relate to "any public building," is not warranted by the terms of the statutes, nor is it supported by decisions of the courts or administrative construction except in the case at bar.

Respectfully submitted,

JACKSON H. RALSTON,
FREDERICK L. SIDDON'S,
WILLIAM E. RICHARDSON,
Attorneys for Appellant.

EXHIBIT A.

FEBRUARY 16, 1905.

The COMPTROLLER OF THE TREASURY.

SIR: In the matter of the motion of Mr. George W. Evans, special disbursing agent, "Extension, Government Hospital for the Insane," for a review of your decision of January 30, 1905, making a disallowance of the payment to himself of the sum of \$5,216.47, being the amount of his commissions of three-eighths of one per centum for disbursement of the appropriations for the construction of additional buildings at the Government Hospital for the Insane, I desire to submit the following statement:

For good and sufficient reasons existing at the time, as explained by Mr. Evans in his appeal, the Secretary of the Interior appointed him a special disbursing agent to make the disbursements in question. He was further directed to give a surety bond of \$25,000 for the faithful performance of this special and specific duty. Said bond was, by direction of the Secretary of the Interior, subsequently increased to \$100,000, to comply with the request made by the Auditor for the Interior Department, dated January 6, 1903.

I desire further to state that this Department does not in any sense consider the service rendered by Mr. Evans in making these disbursements as a part of his duties as disbursing clerk of the Department of the Interior. It was not an extra service added to and pertaining to his duties as such disbursing clerk. It was not an extra pay compensation or allowance to his salary as such. It was a commission of a certain per centum for making special disbursements as provided by the act of March 3, 1875 (18 Stat., 415), the maximum amount of which, therein stated, was allowed by the Secretary of the Interior. He was by order of this Department directed to make the disbursements in question and required to give a good and substantial surety bond to the United States for this specific special service. He has been, from the beginning to the end of this special duty, recognized and treated by the accounting officers of the Treasury as a special disbursing agent, and his accounts as such, and all advances made to him, have been adjusted under the special

bonds aforesaid, and without reference to his bonds as disbursing clerk of the Department.

In conclusion, it may be proper for me to suggest that in the matter of this appointment, etc., the Secretary of the Interior regarded himself more than an administrative officer. It is clearly within the scope of his duty to construe the laws which affect the business of the Department over which he presides. Therefore, he is of the opinion and believes that he was clothed with ample authority to make the appointment in question and to fix the rate of commission for making the disbursements as provided in the act of March 3, 1875, not exceeding the maximum amount therein prescribed—the latest statute on this question.

Respectfully,

E. A. HITCHCOCK,
Secretary.

[18919]

**BRIEF
FOR
THE
UNITED
STATES**

RECEIVED
JAN 10 1910
U. S. DEPT. OF AGRICULTURE
WASHINGTON, D. C.

No. 65

THE UNITED STATES OF AMERICA

DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D. C.

OFFICE OF THE ASSISTANT SECRETARY

WASHINGTON, D. C.

PRINTED BY THE GOVERNMENT PRINTING OFFICE

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

GEORGE W. EVANS, APPELLANT,	} No. 65.
v.	
THE UNITED STATES.	

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The controversy in this case is concerning the claim of appellant for services rendered as special disbursing agent to disburse the appropriation made for the construction of additional buildings in the extension of the Government Hospital for the Insane.

Before and at the time of the appointment of appellant as special disbursing agent for the aforesaid purposes and at all times during the period covered by this claim, he was an employee of the United States and received a salary of \$3,000 per annum. (Rec., p. 4.) This compensation or salary of \$3,000 so received before and during the time he acted as

special disbursing agent was paid to him by reason of his position as disbursing clerk for the Interior Department, for which he received an annual compensation of \$2,000, and for like services to the Architect of the Capitol Building, for which he received the compensation of \$1,000 per annum, thus making the aggregate sum of \$3,000 per annum. (Rec., p. 7.) While receiving said salary of \$3,000 per annum for the aforesaid duties, and to wit, on August 10, 1901, appellant received the following appointment:

SIR: You are hereby appointed a special disbursing agent to disburse the appropriation of \$925,000 authorized and provided by the acts of June 6, 1900, and March 3, 1901 (U. S. Stats., vol. 31, pp. 619 and 1163), for the construction of additional buildings in the extension of the Government Hospital for the Insane.

For this service you will be allowed the maximum compensation prescribed by the act of March 3, 1875 (U. S. Stats., vol. 18, p. 415, and the supplement of the Revised Statutes, vol. 1, second edition, 1874-1891, p. 78), not exceeding three-eighths of 1 per cent.

Very respectfully,

THOS. RYAN,
Acting Secretary.

Two subsequent appointments were made by the Secretary of the Interior in connection with the first appointment, one of which provided that appellant should disburse the money appropriated for an office and administration building and lighting plant, and

the other appointment provided for disbursing money appropriated for painting new buildings. (Rec., pp. 5 and 6.)

The petition prays judgment for the sum of \$5,216.47 for the services performed by appellant under these various appointments as special disbursing agent.

The appellant contends that notwithstanding he was an employee of the Government, receiving a salary of \$3,000 per annum as disbursing clerk for the Department of the Interior, and as disbursing agent for the architect of the Capitol Building, which salary he received throughout the period covered by the claim at bar, he is still entitled to compensation as special disbursing agent under the said appointment.

The Government insists that by reason of sections 1763, 1764, 1765, Revised Statutes, and the 2d section of the act of July 31, 1894 (28 Stat. L., 205), that the appellant is barred from receiving compensation for disbursing the money mentioned in his special appointments.

Said sections read as follows:

Rev. Stat., 1763: "No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall receive compensation for discharging the duties of any other office, unless expressly authorized by law."

Rev. Stat., 1764: "No allowance or compensation shall be made to any officer or clerk,

by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

Rev. Stat., 1765: "No officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

Act of July 31, 1894, sec. 2, 28 Stat., 205:

"No person who holds an office, the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars, shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law."

Section 4839, Revised Statutes, provides that the executive officer of the Hospital for the Insane shall be a superintendent, and the section makes further provision, *inter alia*, that the superintendent shall be a well-educated physician; that he shall reside on the premises and devote his whole time to the welfare of the institution; and that "he shall be the responsible disbursing agent of the institution."

ARGUMENT.

We think that section 1764 is a bar to appellant's claim for services in disbursing the money appropriated for the extension of the Government Hospital for the Insane if the duty of disbursing said money devolved upon some other officer or clerk in the employ of the Government.

As stated in said section 4839, the superintendent "*shall be the responsible disbursing agent of the institution.*" It would therefore seem that the assignment to appellant, "an officer or clerk" of the Government, of the additional duty of disbursing the particular funds here in question was a requirement that he discharge duties which belonged to another officer in the same department, and was in direct contravention of the provisions of section 1764, R. S., so far as the provision to compensate him therefor was concerned.

In the first opinion the Court of Claims seems to hold (Rec., p. 10) that the provision of section 4839 applies only to the disbursement of moneys appropriated "for the support or administrative expenses of the hospital and *not* to disbursements for the construction of new buildings." (Rec., pp. 9, 10.) In the opinion overruling the motion for a new trial, the court seems to have reversed its construction of said section and to have held that it *was* the duty of the superintendent of said hospital to disburse all moneys appropriated by Congress for the use of the Hospital for the Insane, whether the same was for

current expenses, repairs, or extensions. (Rec., pp. 11, 12).

We believe that the latter construction is the correct one. Section 4858 provides as follows:

All appropriations of money by Congress for the support of the Hospital for the Insane shall be drawn from the Treasury on the requisition of the Secretary of the Interior and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money.

The Secretary of the Interior might have legally detailed appellant, or any other clerk, or any number of clerks, in his department to assist the superintendent in the discharge of his duties, but he had no authority to relieve him of the responsibility of disbursing the money appropriated by Congress for this institution. The fact that said superintendent was not given charge of or control over the work of extension in the act of June 6, 1900, does not alter or change his status as the disbursing agent of the institution. Neither does the fact that the accounting officers of the Treasury Department recognized the appointment of appellant and opened an account with him change the plain provisions of the statute designating another officer as the proper one to recognize and with whom the account should have been opened.

Congress seems to have made no distinction between appropriations for maintenance and extension of the institution. In the sundry civil bill of June 6, 1900,

appropriation is made under the head of "Government Hospital for the Insane" for current expenses; for support, clothing, and treatment of Army any Navy patients, for general repairs and improvements, for certain repairs, for construction of a central storehouse and a refrigerator, a cold-storage plant, an engine, a new kitchen; for the construction of a railroad switch; for a water tower, a pump house; for fencing, for building roads, and "for an extension of the hospital sufficient to provide for 1,000 patients." It was for disbursing the money appropriated for this latter item that appellant claims extra compensation. \$50,000 of the amount authorized was appropriated by this very act. Further appropriations were made from time to time to carry out the project authorized by the act of June 6, 1900.

It is our contention that it was just as much the duty of the superintendent of the asylum to disburse the moneys appropriated for the "extension" of the hospital as it was to disburse the money appropriated for current expenses, or for the construction of a central storehouse, or a kitchen, or for the construction of a railroad switch, or for roofing certain buildings, or for any other of the numerous items of repairs and construction provided for in the act of June 6, 1900.

As a matter of fact, said superintendent did disburse \$32,312.13 of the money appropriated for additional buildings in the extension of the Government Hospital for the Insane prior to the time appellant was specially designated as a disbursing

agent for said building fund, and even after that time said superintendent continued to disburse the funds appropriated for the support and maintenance of the hospital, *as well as funds for certain minor additions and improvements.* (Finding IV, Rec., p. 6.)

If these "minor additions" are for the "support" of the institution, it is not seen by what process of reasoning it can be said that the appropriations for the "extension"—that is to say, for the new buildings to be erected to increase the capacity of the hospital—were not for the "support" of said institution.

In *Bartlett v. The United States* it was held by this court, affirming the Court of Claims, that the Secretary of the Treasury had no authority to appoint Bartlett, who was the regular disbursing officer of the Treasury Department—"disbursing agent"—for a public building in Washington, because that duty was incumbent upon the collector of customs for the district of Georgetown. (197 U. S., 230; 39 C. Cls., 338, 344.)

By a parity of reasoning it must be held that the Secretary of the Interior had no authority to employ appellant specially to disburse the appropriation in question, because the statute imposed that duty upon the superintendent of the hospital. This being true, it follows that appellant was not appointed to a new office within the meaning of the decision in the *Saunders* case (120 U. S., 126, 129), but he was assigned to the work of discharging duties belonging to another officer in the same department, compensation for which is prohibited by section 1764, R. S.

There is another reason why, under the law, appellant is not entitled to recover. Section 1765, R. S., clearly and unequivocally provides that no officer in any branch of the public service whose salary is paid or emoluments fixed by law, *shall receive any extra pay or allowance in any form whatever for the disbursement of public money, "unless the same is authorized by law and the appropriation therefor specifically states that it is for such additional pay, extra allowance, or compensation."*

Counsel for appellant argue that the extra compensation sought to be recovered here *is* authorized by law, and in support of their contention, they refer to certain acts of Congress fixing the compensation of collectors of customs or other disbursing agents, appointed where no collectors of customs exist. (Appellant's brief, pp. 7, 8.) If they are right in their contention as to this, there would still be something more required to take appellant without the operation of the provisions of section 1765. There must be an appropriation for the additional pay, extra allowance, or compensation, and the appropriation must explicitly state that it is *for* such additional pay, extra allowance, or compensation.

The act of March 3, 1879 (20 Stat. L., 391), which requires the disbursing clerk of the Department of the Interior to act as disbursing clerk of the Architect of the Capitol and fixes the compensation which he shall receive for such additional duties and provides that the same shall be paid "out of said appropriation," is an illustration of what is necessary to

authorize the allowance of "additional pay, extra allowance, or compensation," to an officer whose salary, pay, or emoluments are fixed by law or regulation.

It is our contention that the statutes which are claimed to provide or authorize the payment of additional compensation to public officers for disbursement of public moneys are not applicable to this case. Counsel call particular attention to the act of August 7, 1882 (22 Stat. L., 306), by italicizing that part of it which they contend is applicable to appellant's case.

It will be observed upon examination of the act referred to that Congress is here legislating with reference to buildings "under the control of the Treasury Department." Said act is a part of the "system of legislation" with reference to the disbursement of money appropriated for the construction of Government buildings under the control of the Secretary of the Treasury "and not located in the city of Washington." The manifest purpose of the act was to secure uniformity in the amount of compensation to be paid disbursing agents appointed under authority of section 3658, R. S.

Sections 3657 and 3658 and the act of August 7, 1882, when read together, as they should be, amply justify the contention we make. For the convenience of the court they are here set forth:

SEC. 3657. The collector of customs in the several collection districts are required to act

as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of customhouses, courthouses, post offices, and marine hospitals; with such compensation, not exceeding one-quarter of one percentum, as the Secretary of the Treasury may deem equitable and just.

SEC. 3658. Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just.

For repairs and preservation of public buildings: For repairs and preservation of customhouses, courthouses, and post offices, and other public buildings under the control of the Treasury Department, one hundred and forty thousand dollars. And any disbursing agent who has been or may be appointed to disburse any appropriation for any United States courthouse and post office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed. (22 Stat. L., 306.)

The act of March 3, 1869 (15 Stat. L., 312), now section 3654, R. S., provides that no "extra" compensation exceeding "one-eighth of one per cent" shall in any case be allowed or paid for disbursing money appropriated for any public building. There

was evidently some doubt as to the application of this act, in view of the provisions of the act of June 12, 1858 (11 Stat. L., 357), now section 3657, above quoted, which provided compensation of "not exceeding one-fourth of one per cent." To make this clear Congress passed the act of March 3, 1875 (18 Stat. L., 415), referred to in the first appointment of appellant by the Secretary of the Interior (Finding I), limiting the compensation to be allowed to disbursing agents for the construction of public buildings to "three-eighths of one per cent." It will be noticed that the rate therein provided is the sum of the rates provided by the acts of June 12, 1858, and March 3, 1869, respectively.

Neither the act of March 3, 1869 (section 3654), nor the act of March 3, 1875, *supra*, authorized the appointment of disbursing agents. The provisions of said acts relate wholly and entirely to the compensation to be allowed disbursing agents authorized by the prior act of June 12, 1858, now section 3657, and the act of July 28, 1866, now section 3658.

It is submitted that the Secretary of the Interior derived no authority from these acts to appoint a disbursing agent for the payment of money appropriated for the construction of the buildings incident to the extension of the Government Hospital for the Insane. The construction of these buildings was not under the control of the Secretary of the Treasury. Moreover, if that authority or power were inherent in the Secretary of the Interior—that is to say, if, by virtue of his general authority, he was

authorized to designate any clerk in the employ of his department to disburse this money, other than the officer specified in the statute (section 4839), the acts above referred to did not fix or prescribe his compensation.

It is unnecessary to discuss the question of whether or not the Secretary of the Interior had the authority to appoint a special agent to disburse this appropriation. We are not questioning his authority to do so in this case. The point at issue is that having selected or designated the regular disbursing officer of his department to perform this duty, he is precluded from any allowance or extra compensation for such services.

Counsel argue (appellant's brief, p. 11) and cite an opinion of the Attorney General to show that the act of July 31, 1894 (28 Stat. L., 205), is not applicable to the facts in this case, because, it is pointed out, the appellant performing the duties assigned to him by the Secretary of the Interior in disbursing this money, was not filling "any other office" within the constitutional sense. It is true appellant was not appointed "to hold" the office of superintendent of the asylum. He was "appointed" to discharge some of the duties belonging to that office, though, and, therefore, comes within the provisions of section 1764, R. S.

The act of July 31, 1894, *supra*, is supplementary to section 1763, R. S. We do not rely upon said section and the supplementary act referred to, although it may very well be that appellant is

thereby excluded from receiving any additional compensation. Payment was refused him by the accounting officers of the Treasury Department on the ground that at the time said special services were rendered he was holding two offices under the Government, the emoluments of which were greater than \$2,500 per annum. The Court of Claims holds that he was receiving a salary compensation of \$3,000 per annum, in the purview of section 1765, R. S. (Rec., p. 12.) Evidently the court meant to say section 1763. Section 1765 is not limited in its application to officers receiving a salary of \$2,500 or more.

However this may be, the appellant is clearly excluded from receiving compensation for his services by virtue of the provisions of sections 1764 and 4839, R. S., and section 1765, R. S.

Counsel for appellant have brought to the attention of the court a statement, which the Court of Claims was requested to include in the findings of fact, and in support of said statement have attached to their brief, as Exhibit A, a letter of the Secretary of the Interior to the Comptroller of the Treasury (pp. 22, 23). The matter stated in the requested finding and discussed in the letter of the Secretary of the Interior is purely argumentative, and very properly found no place in the findings of fact. The opinion of the Secretary of the Interior as to the question of whether or not his act was legal is neither evidence nor "persuasive."

In conclusion we call the attention of the court to the fact that the petition in this case (Rec., p. 3) prays judgment for the sum of \$5,216.47.

Finding 3 (p. 6 of the record) states that the commission fixed by said appointments at three-eighths of 1 per cent, if the claimant is entitled to compensation, is the sum of \$5,290.36, being in excess of the amount claimed in the petition.

We believe the judgment of the court below dismissing the petition should be affirmed.

JOHN Q. THOMPSON,
Assistant Attorney General.

P. M. ASHFORD, *Attorney.*

